

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-207699

DATE: September 21, 1982

MATTER OF: Bernard Cap Company

DIGEST:

1. Classification and designation of labor surplus areas is within authority of Department of Labor (DOL) and GAO has no jurisdiction to question the judgment of DOL on such matters.
2. Protest filed in GAO is dismissed where protested matters are before court of competent jurisdiction, plaintiff has not requested judicial relief pending GAO decision, and court has not otherwise indicated interest in GAO decision.

Bernard Cap Company protests the award of a contract for Air Force men's service caps to Bancroft Cap Company under invitation for bids DLA100-82-B-0597 issued by the Defense Personnel Support Center, Defense Logistics Agency. Bernard contends that the United States Department of Labor has inadvertently omitted Hialeah, Florida, Bernard's proposed place of performance, from its labor surplus area (LSA) listing, thus causing the protester to lose its LSA preference. We dismiss the protest.

This solicitation was issued as a total small business and LSA/small business set-aside which provided that non-LSA small businesses were subject to a five percent evaluation factor. Bancroft's bid was the lowest of the three bids received. Bernard was the second low bidder and was the only bidder to claim eligibility for the LSA evaluation preference. Bernard listed Hialeah, Florida as the site where all of its manufacturing and production costs for the contract would be incurred. However, at the time of bid opening and at the time of award, Hialeah was not included in the Department of Labor's listing of LSAs and therefore the contracting officer determined that Bernard was not eligible for the LSA evaluation preference. Consequently, Bancroft remained the low bidder and was awarded the contract.

Bernard contends that the Department of Labor "inadvertently" omitted Hialeah from its list of LSAs and has been aware of this error since January 1981. It maintains that but for this error it would have received this contract.

The essence of Bernard's protest is that DOL has erred by not classifying Hialeah as an LSA. As indicated in the IFB, it is within the authority of DOL to classify and designate areas as LSAs. DOL did not classify Hialeah as an LSA and our Office has no jurisdiction to question the judgment of DOL as to LSA designations. 51 Comp. Gen. 335 (1971); Watts Manufacturing Corporation, B-182811, April 18, 1975, 75-1 CPD 237.

Subsequent to filing its protest with our Office, Bernard filed suit against the Secretary of Labor and Florida's Secretary of Commerce in the United States District Court for the Southern District of Florida (Civil Action No. 82-1345). The grounds presented as the basis for the suit are essentially the same as those presented to this Office in support of the protest.

It is the policy of our Office not to decide protests where the material issues are pending before a court of competent jurisdiction unless the court requests, expects or otherwise expresses an interest in our decision. 4 C.F.R. § 21.10 (1982). There is no indication in the record that Bernard has requested judicial relief pending a decision by this Office, or that the District Court has indicated interest in our decision. Therefore, even if this matter was within our jurisdiction, the protest would be dismissed. Triple A Machine Shop, Inc., B-204027; August 31, 1981, 81-2 CPD 188.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel